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No. 625

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

CECIL I. HUST,
Petitioner and
Plaintiff-Respondent below,

against

MOORE McCORMACK LINES, INC.,
Respondent and
Defendant-Appellant below.

PETITION FOR PERMISSION TO FILE BRIEF *AMICUS CURIAE*, AND BRIEF *AMICUS CURIAE*

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The undersigned, as general counsel for the National Maritime Union of America, respectfully petitions this Honorable Court for leave to file the accompanying brief *amicus curiae* with the consent of the attorneys for the petitioner, Cecil I. Hust.

Your petitioner has read the petition of Cecil I. Hust and the brief submitted by his attorneys in support of his petition for writ of certiorari herein, and endorses the arguments and reasons therein set forth.

The National Maritime Union of America alleges that it is a non-incorporated membership organization, organ-

ized and existing under and by virtue of the laws of the State of New York, for the purpose of improving the conditions of workers employed in the American Merchant Marine. It has a membership of more than 90,000 seamen. Having written collective bargaining agreements with more than 125 private shipping companies, it maintains branches in all of the principal ports along the Atlantic, Gulf and Pacific coasts including a branch in Puerto Rico and Hawaii. That various members of the National Maritime Union have employed the undersigned to represent them in proceedings filed in the United States District Courts as well as the Supreme Court of the State of New York to recover damages for personal injuries and damages arising out of the death of various members.

That Public Law 17 before its adoption and while considered by Congress was known as H. R. 133. That both prior to the introduction of the bill and while the bill was under consideration in the House the petitioning union through its Washington representatives presented the views of the Merchant Seamen and indicated the extent to which the members of the petitioning union would be affected by the proposed law. We urged then, as we urge now, that the private steamship companies which would take over the government's ships were to be considered as private operators. That this decision was dictated by the fact that the union was a party to collective bargaining agreements to all of the ship owners whose vessels were requisitioned, and who thereafter became general agents for the W. S. A.

The members of the petitioning union are vitally interested in attempting to preserve their rights given to them by Congress under the Jones Act. One of the fundamental rights given to railway workers is the right of trial by jury. The Jones Act specifically gives the seamen the same remedy. An interpretation of the G. A. A. under the *Hust* case definitely takes such right from the seamen.

WHEREFORE, your petitioner respectfully petitions this Honorable Court for leave to file the accompanying brief *amicus curiae*, and that the judgment of the Oregon Supreme Court should be reversed.

Attorney for Petitioners,
Office and P. O. Address,
291 Broadway,
New York City.

STATE OF NEW YORK,
CITY OF NEW YORK, } ss.:
COUNTY OF NEW YORK,

WILLIAM L. STANDARD, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn to before me this
5th day of March, 1946.

William L. Standard

Abraham Weisberg

Notary Public.
Kings County Clerk's No. 211.
New York County Clerk's No. 754.
Commission Expires March 30, 1946.

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BRIEF OF *AMICUS CURIAE*

Preliminary Statement

There is an important question of law in the *Hust* case which directly affects the rights of seamen. Many of them are members of the National Maritime Union as stated in the petition and many of them have suits pending in the various courts throughout the United States to recover damages for injuries sustained on board ship.

The vital question is whether or not under the General Agency Agreement entered into between the War Shipping Administration and the various private steamship companies these private companies are exonerated from liability under the Jones Act. At the time of the preparation of this brief the various lower courts, with the exception of the Oregon Supreme Court in the *Hust* case, have not squarely decided that important question.

POINT I

The General Agency Agreement is in effect an operating agreement although the crew may be technically employees of the United States.

The General Agency Agreement, or, as it became known later on, the G. A. A., came into being on April 4, 1942. It was a universal one in the shipping industry and was made mainly to enable the government, in its far-flung maritime activities, to utilize the facilities, skill and "know-how" of experienced ship operators for those vessels that had not only been built for the government, but which the government had seized at the outbreak of the war through its administrative agency, the War Shipping Administration.

Petitioner Hust's attorneys have amply analyzed the agreement in the brief in support of certiorari. Reading the instrument as a whole rather than emphasizing such phrases that the drafters injected for the purpose of indicating that it was something other than an actual operating agreement, the conclusion is irresistible that in effect it is an agreement for operation and nothing else.

The reason for it is obvious. The government lacked both the facilities or the "know-how" and the experience. It retained these private steamship companies in order to utilize efficiently going civilian concerns for the war effort.

The merchant marine was of the utmost strategic importance. Obviously it could only be of such strategic importance in the hands of experienced men. To say then, as the Oregon Supreme Court said in the *Hust* case, that it was a mere service agreement, would defeat the very purpose of the government assigning these ships over to the private steamship companies.

To indicate to what extent the government desired to utilize the experience of these private steamship companies with whom it made these agency agreements the following

is rather significant. Under Public Law 17 the Commission, for the purpose of carrying out the provisions of that law, made certain rules and regulations. In Rule 304.25 there is a specific provision that in those claims involving personal injuries and death, or maintenance and cure, before suit can be commenced there must first be filed a notice setting forth the time, place and cause of the accident or claim. There is a similar provision in the very same rule under claims arising out of war risk insurance policies.

In the latter claim (war risk insurance) the War Shipping Administration maintains control and the provision in that rule, is to the effect that such claim must be filed with the Chief Adjuster of the War Shipping Administration in New York. On the other hand, in claims arising out of damages for personal injuries or death, or maintenance and cure, the rule provides that such notice must be filed *with the general agent of the vessel.*

It is perfectly apparent that not only did the government desire to utilize the vast experience of these private steamship companies in the operation of the government owned vessels, but furthermore took advantage of their vast experience in the handling of personal injury claims. If the Oregon Supreme Court is correct in its interpretation of the General Agency Agreement, and if the War Shipping Administration is not only technically, but actually, the employer of the crew, doesn't it seem rather incongruous that a provision was made by the War Shipping Administration compelling the filing of these claims with these experienced private steamship companies?

Another rather significant factor that strongly leans towards the real meaning and intent of this agreement is that despite the obvious desire of the drafters of the instrument to avoid the effect of the Brady decision, time and again the drafters were hard put to it in avoiding the use of the world "operation" or language of similar intention. So, for instance, there is a provision that the agent

shall continue to use its usual commercial form in bill of lading. Under Articles 5 and 7 provision is made for payment for services rendered under the agreement and there we find two types of payment or reimbursement; one for general administrative expenses such as taxes, etc., and other payments to be made for "maintenance, management, *operation* or the conduct of the business of the vessels hereunder."

Under Article 8, a provision is made for reimbursement to the agent for payments made for maintenance and cure, personal injuries and death claims and under Article 16-A the War Shipping Administration agrees to indemnify the agent against all claims, whether involving personal injuries or property, arising "out of or in any way connected with the *operation* or use of said vessels, etc."

Furthermore, the source and manner of hiring the members of the crew remained the same as it had existed prior to the advent of the agency agreement. Wherever there were union contracts, they were to be respected and followed and the union hiring hall was still the source of obtaining crew personnel.

On May 8, 1942, within a month after the adoption of the G. A. A. (April 4, 1942), there was issued a statement of policy by Emory S. Land, Administrator, Edward McCauley, Assistant Deputy Administrator, and William Radner, counsel for the W. S. A., and Joseph Curran, President of the National Maritime Union of America (petitioning union). Defining the intent of the War Shipping Administration in its relationship to union hiring, wages, etc., and in clarification of that article of the General Agency Agreement which stated, in effect, that the General Agent is to procure the master of the vessel who shall be an agent and employee of the United States, the policy expressed in that document states that the intention of that clause was to make available fully a supply of officers and men and to avoid favoritism as to conditions between one agent and another with respect to preference of employment or use of union hiring halls, etc.

The statement of policy further provided that all existing collective bargaining agreements be continued. Later on, when there was some doubt expressed as to whether that statement of policy would apply to new agents that the government may secure, Edward McCauley, Assistant Deputy Administrator, in a communication to the petitioning union, reaffirmed the policy to the effect that those private steamship companies who had contracts with the National Maritime Union were to be continued as such agents and would be among those chosen as agents under the agreement.

Again, later on (September of 1943), some changes were suggested by the union to the private steamship companies, members of the American Merchant Marine Institute, all of whom had General Agency Agreements. These changes involved wages and working conditions. It is significant that all of these companies, acting through the Institute in their negotiations with the union, assumed the position of employers of the crews.

On November 2, 1945, at the request of Mr. McCauley, there was submitted a report by Hubert Wyckoff, Assistant Deputy Administrator for maritime labor relations, in the form of a summary as to how effectively the unions cooperated with the steamship companies in the war effort. It is a rather comprehensive review and we shall not attempt to quote from it, but a reading of it persuasively suggests that the relationship of crew members towards the various private steamship companies, is continuously treated as that of employer and employee.

In fulsome praise it suggests that the no-strike agreement made by the unions shortly after Pearl Harbor was meticulously observed. It sets forth that in the enactment of Public Law 17 the rights and benefits accruing to merchant seamen heretofore employed on private vessels was made applicable to men employed on government owned or seized vessels. It specifies that mutual benefits arose out of the relationship and that the discipline and order, so much desired on merchant ships during the war, was

readily acknowledged by the unions and in turn the men received the benefits of private merchant seamen. It set forth that the remedial Jones Act benefits were to be made available to seamen working on these vessels.

One of the basic and most fundamental rights under the Jones Act is the trial by jury. The Oregon Supreme Court, in its decision, takes away that right and modifies the Jones Act by permitting its principles of law to be made applicable only in the admiralty courts.

When Public Law 17 was before Congress it was then known as H. R. 133 and it is interesting to note that the House report, in discussing the general policy of the War Shipping Administration, states that the vessels owned by the W. S. A. "are *operated* by experienced steamship companies as general agents for the Administrator" (1943 A. M. C. at p. 617).

Again it is pointed out in the House report that the General Agency Agreement specifically provides that the agent shall procure officers and crew for W. S. A. vessels through "the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time" (Article 3-A(d), General Agency Agreement).

The House report further states: "The intention of this provision is to authorize the general agent to procure his seagoing personnel through the customary channels in cases where the general agent had previously operated under union contracts." The government certainly had no "customary channels".

The Oregon Supreme Court nevertheless insists that the War Shipping Administration is the operator and relies strongly on the article making the master an employee of the W. S. A. Such holding, it seems to us, disregards the intent and purpose of the entire arrangement. Such holding disregards the expressions of Congress. Such

holding takes away from seamen the oft-expressed policy that he have the same rights as a railroad employee.

The seamen, as is now well known, have fought long and hard in their attempt to better their conditions. All this remedial legislation was not fast in coming to them. The right of trial by jury was not the least of them. Can such a fundamental right given to them by Congress be taken away by an agreement?

Furthermore, the interpretation of the General Agency Agreement in the *Hust* case would make meaningless the entire theory of hiring experienced steamship operators. If the W. S. A. operates the vessel under the General Agency Agreement, of what value is this effort to make sure that this strategic force, so essential to the war effort, became really effective. To what purpose these huge sums of money paid to these private steamship companies!

CONCLUSION

The judgment of the Oregon Supreme Court in the *Hust* case should be reversed.

Respectfully submitted,

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